

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8645 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L. DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BIPINBHAI RANCHODBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR. THAKKAR FOR MS SUMAN PAHWA for Petitioner
MR. D.P. JOSHI, AGP, for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L. DAVE

Date of decision: 17/12/1999

ORAL JUDGEMENT

The District Magistrate, Ahmedabad, passed an order on 12.10.1999 in exercise of power under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980

(hereinafter referred to as 'PBM Act') detaining the petitioner Bipinbhai Ranchodbhai Patel. The grounds of detention indicate that gross irregularities was found in the licenced business of the petitioner regarding groundnut oil and soyabean oil. After considering less drastic remedies the detaining authority came to the conclusion that the detention under PBM Act is the only remedy which could be resorted to, to immediately prevent the petitioner from pursuing his activities, which are detrimental to regular supply of essential commodities like rapeseed oil and peanut oil.

2. The petitioner-detenu challenges the detention by way of this petition on various grounds. The learned counsel for the petitioner has pressed into service the main ground that the Central Government has not considered the representation made on behalf of the detenu in time. Therefore, the continued detention would be rendered illegal. Another point that is raised is that the less drastic remedy in form of suspension or cancellation of licence has not been considered.

3. Mr. Thakkar, learned counsel, for the petitioner in order to substantiate his first ground has relied on the affidavit in reply filed on behalf of the Central Government itself. He submitted that according to the affidavit undisputedly the representation dated 18.10.1999 was received on 22.10.1999. Parawise remarks of the State Government were called for telegraphically on 22.10.1999 which were received on 28.10.1999 and the representation was decided by the Central Government on 29.10.1999. He submitted that there was no need for the Central Government to call for the parawise remarks from the State Government as the Central Government, already had the report from the State Government required to be submitted by the State Government under Section 3(4) of the P.B.M. Act. Another argument is that it is not clear as to whether the parawise comments were called for upon instructions of the authorised officer. If not, it indicates non-application of mind and there is no explanation coming from the affidavit as to why they were called for when the report was with the authority. Mr. Thakkar, therefore, submitted that delay in considering the representation would render continued detention illegal and therefore, the petition may be allowed. As regards non-consideration of less drastic remedy Mr. Thakkar submitted that the authority has not considered less drastic remedy available to it in form of suspension or cancellation of the licence under which the detenu was trading. In this regard reliance is placed on two decisions in the cases of Ganeshbhai Vs. District

Magistrate reported in 24(2) G.L.R. 1016 and P.N. Khemani Vs. State reported in 26(2) G.L.R. 620.

4. Mr. Joshi, learned A.G.P. opposed this petition. According to him availability of less drastic remedy is not a bar. He relied on the decision in the case of Nareshkumar Ambalal Modi Vs. State of Gujarat reported in 1989(1) GLR 288. He submitted that the grounds of detention in the present case are concerned. In paragraph 10 of the grounds of detention on page 25 the authority has considered alternative remedy by stating generally that it is not possible to resort to action against the petitioner under general laws and therefore, this would include action under Gujarat Essential Articles (Licensing, Control and Stock declaration) Order, 1981 under which licence can be suspended or cancelled.

5. Ms. Davawala appearing for the Central Government has opposed this petition and has relied on the affidavit in reply filed on behalf of the Central Government.

6. Considering the rival side contention the first contention that is raised on behalf of the petitioner is regarding delay in deciding the representation by the Central Government.

6.1 In this regard, the factual aspect that emerges from the affidavit in reply, filed by the Under Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi, is that the representation dated 18.1.1999 on behalf of detenu was received by the Central Government on 22.10.1999. Parawise comments of the State Government were called for telegraphically on that very day and the same were received on 28.10.1999. The representation was decided on 29.10.1999.

6.2 The bone of contention in this regard on behalf of the petitioner is that, there was no need for the Central Government to call for parawise remarks. The order of detention was dated 12.10.1999. The State Government was required to send its report to the Central Government within 7 days and therefore when the representation was received on 22.10.1999, the report must be with the Central Government. However, there appears no substance in this contention, for the reasons that, the State Government would be expected to send its report within 7 days of detention if the order is passed by the State Government itself or where the order is

passed by any other authority, within 7 days of the State Government approving detention. In the instant case the order of detention was passed by the District Magistrate, Ahmedabad on 12.10.1999, and the same was approved by the State Government on 22.10.1999 and therefore the report was required to be sent within 7 days from 22.10.1999 as required under Section 3(4) of the PBM Act. Therefore, when the representation was received by the Central Government, it is quite possible that it may not have received the report from the State Government. However, the affidavit in reply filed on behalf of the Central Government does not throw any light on this aspect of the matter.

6.3 Another ground on which the calling of remarks is assailed upon is that the parawise comments were called for by the Central Government without application of mind. There is nothing to indicate that had the competent authority had applied its mind and upon instructions of the competent authority the parawise remarks were called for. There appears to be substance in this argument. The affidavit in reply filed on behalf of the Central Government, does not say anything as to why and at whose instance the parawise comments were called for. It does not indicate that the parawise comments were called for at the behest of the competent authority. In view of the decision in the case of A. Paulsamy Vs. Union of India reported in 1999(4) SCC 415, this would indicate non-application of mind by the competent authority on the representation and would also reflect the casual manner in which the representation is dealt with. The continued detention would therefore stand vitiated. The petition therefore deserves to be allowed on this ground alone.

7. At this stage Mr. Thakkar, learned advocate, appearing for the petitioner does not press for a decision on the other points raised by him during the course of argument.

8. The petition is allowed. The impugned order of detention dated 12.10.1999 passed by the District Magistrate, Ahmedabad, is quashed and set aside. The detenu Bipinbhai Ranchodbhai Patel be set at liberty forthwith if not required in any other case. Rule made absolute.

(A.L. DAVE, J)

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